

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Creation of a Low)	MM Docket No. 99-25
Power Radio Service)	

To: The Commission

**REPLY COMMENTS
OF EDGEWATER BROADCASTING, INC.
AND RADIO ASSIST MINISTRY, INC.**

Edgewater Broadcasting, Inc. (“EB”) and Radio Assist Ministry, Inc. (“RAM) (together with EB, the “Ministries”), hereby submit their reply to the comments filed by various parties concerning certain technical low power FM (“LPFM”) issues raised in the Further Notice of Proposed Rulemaking portion of *Creation of Lower Power Radio Service, Second Order on Reconsideration and Further Notice of Proposed Rulemaking*, MM Docket No. 99-25, FCC 05-75, released March 17, 2005 (the Further Notice of Proposed Rulemaking portion hereafter referred to as “FNPRM”).¹ As discussed below, the Ministries generally agree with the comment filed by the National Association of Broadcasters (“NAB”), National Public Radio (“NPR”), Educational Media Foundation (“EMF”), Montana Broadcasters Association (“MBA”), Saga Communications, Inc. (“Saga”), and the joint comments of the Named State Broadcasters Associations (“State Associations”).² Further, the Ministries wholly disagree with

¹ The *Second Order on Reconsideration and Further Notice of Proposed Rulemaking* was published in the Federal Register on July 7, 2005. 70 Fed. Reg. 39182 (July 7, 2005) (Second Order portion); 70 Fed. Reg. 39217 (July 7, 2005) (Further Notice of Proposed Rulemaking portion setting the due date for comments as August 8, 2005). On August 3, 2005, the FCC released an Order extending the due dates for filing comments and reply comments to August 22, 2005 and September 21, 2005, respectively. *Order*, DA 05-2253, released August 3, 2005. Accordingly, these Reply Comments are timely.

² The broadcaster associations of the following states and territories jointly filed comments: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland/District of Columbia/Delaware, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon,

the comments filed by various parties led by the Prometheus Radio Project³ as well as the comments filed by REC Networks (“REC”) and National Translator Association (“NTA”). The following reply comments are respectfully submitted for the Commission’s consideration:

Reply Comments

1. LPFM stations should not be granted primary status over FM translator stations.⁴ The Ministries completely agree with EMF and NPR that FM translator stations are an indispensable means by which public and nonprofit entities, such as the Ministries, EMF, NPR and other networks, as well as state and local public radio entities, serve rural communities that are often unable to receive full power service or are ignored by commercial full power radio stations.⁵ As noted by NAB, NPR and MBA, FM translator stations are critical in delivering essential news, weather, and emergency information, particularly in rural and terrain challenged areas.⁶ In fact, FM translator stations are often the only cost effective way to provide regional and state-wide programming to many small communities that cannot directly receive the signals of full power radio station due to mountainous terrain, for example, or that cannot support their own full power

Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin.

³ Prometheus Radio Project, National Federal of Community Broadcasters, Office of Communications - United Church of Christ, Inc., Free Press, Common Cause, Center for Creative Voices in Media, The U.S. Public Interest Research Group, Center for Digital Democracy, CCTV Center for Media & democracy, Media Alliance, Benton Foundation, Reclaim the Media, The Center on Democratic Communications, New Mexico Media Literacy Project, Media Democracy Chicago, Citizens for Independent Public Broadcasting, New America Foundation, Students Concerned About Mass Media, The People’s Channel, National Hispanic Media Coalition, Portsmouth Community Radio-WSCA, Radio Free Moscow-KRFP, Valley Free Radio-WXOJ, KDRT, Richmond VA Greens Party, Hawaii Consumers, Thinking Out Loud, and The Future of Music Coalition filed comments jointly (all of these parties hereafter “Prometheus Et Al”). In addition, Prometheus Radio Project, National Lawyers Guild, and Future of America Coalition filed additional comments as Appendix B of the comments of Prometheus Et Al (these parties hereafter “Prometheus Appendix B Parties”), and The National Federation of Community Broadcasters and Office of Communication of the United Church of Christ, Inc. filed additional comments as Appendix C of the comments of Prometheus Et Al (these parties hereafter “Prometheus Appendix C Parties”).

⁴ Comments of EMF, at page 6; Comments of NPR at pages 5-9; Comments of Saga, at pages 7-8.

⁵ Comments of EMF, at page 6; Comments of NPR at pages 5-9.

⁶ Comments of NAB, at page 3 and pages 22-24; Comments of NPR at pages 5-9; Comments of MBA, at page 1.

radio stations.⁷ These communities would otherwise have no access to regional or state emergency information, emergency alert system (EAS), Amber Alerts, or news or other programming.⁸ Because many of these un-served and under-served communities cannot support a commercial or noncommercial full power radio station, FM translator stations (especially those that are satellite fed) are often the only means of providing programming to meet the unique needs and interests of these communities throughout the country. For example, EMF serves approximately 752,000 listeners each week through over 160 FM translator stations.⁹ Granting primary status to the LPFM service will irreparably harm the full power FM service as well as the FM translator service, especially those that provide service to un-served and under-served communities through a series of FM translators (daisy chains).¹⁰

2. On balance, the very limited benefit of permitting LPFM stations to initiate service (by granting LPFM stations primary status over FM translator stations) does not outweigh the huge detriment to the public interest that will be caused by the destruction of established FM translator service and the deprivation of relied-upon programming to a very substantial number of listeners.¹¹ As EMF points out, although LPFM stations are permitted to do so, LPFM stations are not required to locally originate programming.¹² Thus, while praised as a panacea for localism concerns, there is no guaranty that LPFM stations will provide locally originated programming or that any such programming will better serve the public interest as compared to the programming provided by the FM translator stations that will be displaced by LPFM stations

⁷ Comments of NAB, at page 3 and pages 22-24; Comments of NPR at pages 5-9; Comments of MBA, at page 1.

⁸ Comments of NAB, at page 3 and pages 22-24; Comments of NPR at pages 5-9; Comments of MBA, at page 1.

⁹ Comments of EMF, at page 6.

¹⁰ Comments of NAB, at page 14 and pages 26- 27; Comments of NPR at pages 5-9.

¹¹ Comments of EMF, at page 7.

¹² Comments of EMF, at pages 10-11.

should they be granted primary status.¹³ As explained by the Ministries and NAB, and as long established by the Commission itself, programming need not be locally originated in order to be relevant to a local community or responsive to its needs.¹⁴ Thus, contrary to the unsupported claims of the Prometheus Appendix B Parties, the Commission cannot assume that satellite fed noncommercial FM translator stations do not serve the goals of localism merely because they are prohibited from originating programming.¹⁵ Without any empirical evidence that clearly shows that the LPFM service better serves the public interest more than the FM translator service, any decision by the FCC to grant primary status to LPFM stations would be arbitrary and capricious.¹⁶

3. LPFM stations must not be allowed to operate if there is predicted interference within the 70 dBu contour of an “encroaching” second- or third-adjacent channel full service FM station.

The Ministries agree with NAB, NPR, and Saga that the Commission is statutorily prohibited from relaxing the second- or third-adjacent channel protections for full power FM stations by the Radio Broadcast Preservation Act.¹⁷ The Radio Broadcast Preservation Act requires all LPFM

¹³ Comments of EMF, at pages 10-11.

¹⁴ Comments of the Ministries, at page 7; Comments of NAB, at pages 22-26; Comments of NPR, at pages 7-8; *In the Matter of Broadcast Localism, Notice of Inquiry*, MM Docket 04-233, 19 FCC Rcd 12,425, at page 12,431 (2004) (citing *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and program Log Requirements for Commercial Television Stations, Memorandum Report and Order*, 104 FCC 2nd 357, at page 366 (1986)).

¹⁵ Comments of Prometheus Appendix B Parties, at Appendix B.

¹⁶ See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983); *AT&T Corp. v. FCC*, 113 F.3d 225, 229 (D.C. Cir. 1997); *Prometheus Radio Project v FCC*, 373 F.3d 372 (3rd Cir. 2004); Comments of EMF, at pages 10-11. The Ministries also agree with EMF that if the Commission really wants to enhance localism, the Commission should amend its rules to permit FM translator stations to originate local programming on a limited basis so that FM translator stations can air public service announcements and other programming such as local news. *Id.* at pages 12-13.

¹⁷ District of Columbia Appropriates Act, FY 2001, Pub. L. No. 106-553, §632, 114 Stat. 2762, 2762A-111 (2000) (“Radio Broadcast Preservation Act”); Comments of NAB, at pages 5-8; Comments of NPR, at pages 14-18; Comments of Saga, at pages 9-10.

stations to protect full power FM stations on co-, first-, second-, and third-adjacent channels.

Section 632(a) of the Radio Broadcast Preservation Act specifically states:

The Federal Communications Commission *shall* modify the rules authorizing the operation of low-power FM stations, as proposed in MM Docket No. 99-25 to [A] ***prescribe the minimum distance separation for third-adjacent channels*** (as well as for co-channels and first- and *second-adjacent channels*) . . .

[2] The Commission may not [A] eliminate or reduce the minimum separations for third-adjacent channels required by paragraph (1)(A) . . . [B] except as expressly authorized by an Act of Congress enacted after the date of this Act.¹⁸

Importantly, although Congress did not make any distinction between existing and subsequently authorized full power FM stations in the text of Section 632(a), the legislative history expressly addresses LPFM protection of subsequently authorized full power radio stations:

Section 2(a)(1) of the bill directs the FCC to modify its rules authorizing LPFM service to provide for minimum separations between LPFM stations and other stations operating on the same channel, or the first, second, or third adjacent channel from the LPFM station. The Commission is directed to maintain the same level of protection from interference from other stations for existing stations ***and any new full-power stations*** as the Commission's rules provided for such full power stations on January 1, 2000, as provided in section [sic] 73 of the Commission's rules (47 C.F.R. 73). ***The Committee intends that this level of protection should apply at any time during the operation of an LPFM station. Thus, LPFM stations which are authorized under this section, but cause interference to new or modified facilities of a full-power station, would be required to modify their facilities or cease operations.***¹⁹

Moreover, it is noteworthy that the Commission itself declared that pursuant to Section 73.809, “. . . LPFM stations are responsible for resolving all allegations of actual interference to the reception of a co-channel, or first-, second-, or third-adjacent channel full service station within the full service station's 70 dBu contour.”²⁰ Thus, the Commission lacks authority to modify the

¹⁸ Radio Broadcast Preservation Act, Pub. L. No. 106-553, §632 (emphasis added).

¹⁹ H.R. Rep. No. 567, 106th Cong., 2nd Sess. 4 (2000) (emphasis added), at pages 7-8; Comments of NPR, at pages 14-18.

²⁰ FNPRM at para. 37.

protections afforded to existing and subsequently authorized full power FM stations by LPFM stations in Section 73.809 of its rules.

4. The Ministries completely agree with the State Associations that any rule technical changes in the LPFM service is premature. As the State Associations explain, the LPFM service is still in its infancy.²¹ Since the establishment of the LPFM service in 2000 (with filing windows in 2000 and 2001), more than 3,200 applications for new LPFM stations have been filed.²² Of these applications, approximately 1,175 construction permits have been granted and about 590 LPFM stations are actually on air.²³ This means that approximately only 18% of all applications filed for new LPFM stations are in operation.²⁴ Clearly, these statistics show that there is a lack of operational history to support any technical rule changes in the LPFM service.²⁵ Again, without any empirical record, there is no rational basis for the Commission to modify the technical LPFM rules.

5. Furthermore, as the State Associations reminds the Commission, the Commission itself envisioned the LPFM service as a secondary service noting that LPFM licenses are to be granted with the understanding that the licenses may be limited by subsequently authorized full power radio stations.²⁶ To date, there has been only one (1) case where an LPFM station had to discontinue operations due to a subsequently authorized full power radio station, according to the Commission.²⁷ The Ministries agrees with the State Associations that “[a] single instance of discontinuance hardly endangers the integrity of the LPFM service as a whole, or justifies a

²¹ Comments of State Associations, at page 3.

²² Comments of State Associations, at page 3.

²³ Comments of State Associations, at page 3.

²⁴ Comments of State Associations, at page 3.

²⁵ Comments of State Associations, at page 3.

²⁶ Comments of State Associations, at pages 4-9.

²⁷ FNPRM, at para. 38.

radical revision of the current LPFM framework that would certainly harm full-power operations.”²⁸

6. The FCC should not extend the freeze of all pending applications for new FM translator stations. The Ministries agree with NAB, the State Associations, and EFM that there is absolutely no evidence to assume that the 2003 FM Translator Filing Window impeded the LPFM service.²⁹ In fact, contrary to the wholly unsupported allegations of Prometheus Appendix B Parties,³⁰ the number of applications for new FM translator stations filed during the 2003 FM Translator Filing Window³¹ merely demonstrates the value and demand for the FM translator service.³² The Ministries disagree with the Prometheus Appendix B Parties’ ridiculous assertion that every new FM translator takes the place of a potential new LPFM station.³³ As the Ministries demonstrated in its comments, an analysis of existing FM full power radio stations, existing FM translator stations, and existing LPFM stations as compared to FM translator facilities resulting from the 2003 FM Translator Filing Window clearly shows that there are ample opportunities throughout the United States to locate new LPFM stations.³⁴ Furthermore, the Commission itself observed, “. . . Prometheus’s contention that every new translator ‘takes the place’ of a potential LPFM station is incorrect.”³⁵

²⁸ Comments of State Associations, at page 5.

²⁹ Comments of NAB, at pages 3-5 and page 14; Comments of State Associations, at pages 7-9; Comments of EMF, at pages 7-8; Comments of the Ministries, at pages 4-6 and Exhibits 1-3.

³⁰ Comments of Prometheus Appendix B Parties, at Appendix B.

³¹ The filing window opened by the FCC on March 10, 2003 for the submission of certain FM translator applications (“2003 FM Translator Filing Window”). FCC Public Notice entitled “FM Translator Auction Filing Window and Application Freeze,” DA 03-359, rel. February 6, 2003; FCC Public Notice entitled “FM Translator Auction Filing Window and Application Freeze Extended to March 17, 2003,” DA 03-633, released March 5, 2003.

³² Comments of EMF, at pages 7-8; Comments of Saga, at page 7; Comments of State Associations, at page 9.

³³ Comments of Prometheus Appendix B Parties, at Appendix B.

³⁴ Comments of the Ministries, at pages 4-6 and Exhibits 1-3.

³⁵ FNPRM, at para. 31.

7. As Saga makes clear, the number of applications for new FM translator stations filed in the 2003 FM Translator Filing Window was predictable given the change in the processing policies for FM translator applications to a window filing system.³⁶ Prior to the adoption of the window filing system, an applicant filed an application for a FM translator station, which the Commission listed on a public notice in order to invite competing applications. If on the rare occasion that competing application(s) were filed, the Commission chose among the mutually exclusive applications. When the window filing system was adopted, however, the broadcasting industry understood that if a broadcaster wanted a FM translator station, the broadcaster ought to file for it during the 2003 FM Translator Filing Window in order to avoid being precluded by a competitor.³⁷ As the State Associations succinctly summarizes:

[T]he overwhelming demand for FM translators attests to the degree to which there is a [sic] public interest need for such translators. The large volume of FM translator applications demonstrates that the Commission actually *underestimated* the public interest benefits that stem from the use of translators. The Commission should not now prejudice the use of FM translators, simply because they have proven even more necessary and beneficial than the Commission originally anticipated.³⁸

Thus, without clear evidence that future LPFM licensees operating under the existing minimum distance separation rules will in fact be precluded by FM translator stations resulting from the 2003 FM Translator Filing Window, there is absolutely no basis for the FCC to continue the freeze.³⁹

8. If the Commission is concerned about any possible wrongdoing by any of the applicants who filed in the 2003 FM Translator Filing Window, the Commission should investigate any

³⁶ Comments of Saga, at page 7.

³⁷ Comments of Saga, at page 7.

³⁸ Comments of State Associations, at page 9 (emphasis in original).

³⁹ Comments of NAB, at pages 3-5 and pages 27-32.

such applicants instead of reclassifying the LPFM service (to primary status) and/or downgrading the FM translator service (with respect to LPFM).⁴⁰ The Commission already has authority to investigate and reject any fraudulently filed or otherwise defective applications filed in the 2003 FM Translator Filing Window.⁴¹ Should the Commission decide to investigate the Ministries, the Ministries are confident that the Commission will find no wrongdoing by the Ministries whatsoever. Regardless of the unsubstantiated claims of the Prometheus Appendix B Parties, the Ministries have been, and are still, dedicated to building out a translator network to provide Christian programming to under-served areas. The Ministries use their full power FM radio stations and FM translator stations to provide news, public affairs, information and entertainment programming with a Christian message to the various communities of license. While building its translator network, including the filing of applications for new FM translator stations in the 2003 FM Translator Filing Window, the Ministries have been fully compliant with the Communications Act of 1934, as amended, as well as the Commission's rules and policies.

9. Finally, as discussed above, any rule technical changes in the LPFM service is premature because the LPFM service is in its infancy with only one (1) instance where an LPFM station had to cease operation due to a subsequently authorized full power FM stations. Moreover, there is absolutely no empirical evidence that the resulting FM translator facilities resulting from the 2003 FM Translator Filing Window has had any significant preclusive effect on the LPFM service. To the contrary, as demonstrated by the Ministries in its comments, there are ample opportunities for proponents of LPFM to locate LPFM stations throughout the United States (as

⁴⁰ See Emergency Motion to Dismiss, filed on March 14, 2005 in this docket by the Ministries in response to the Emergency Petition for Freeze on Pending FM Translator Applications, filed on March 9, 2005 by Prometheus Radio Project, REC Networks, Office of Communication of the United Church of Christ, Inc., National Federation of Community Broadcasters, Future of Music Coalition, Free Press, Center on Democratic Communication of the National Lawyers Guild, and New America Foundation; Comments of NPR, at pages 12-14.

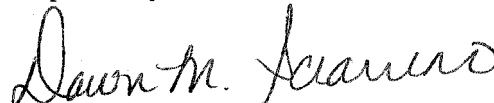
⁴¹ Comments of NPR, at pages 12-14.

soon as the Commission opens another LPFM filing window). Therefore, the Commission should not adopt the proposed technical rule changes sought by the National Translator Association, Prometheus Radio Project Et Al, Prometheus Appendix B Parties, Prometheus Appendix C Parties, or REC Networks.

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WHEREFORE, Edgewater Broadcasting, Inc. and Radio Assist Ministry, Inc.
respectfully submit the foregoing for the Commission's consideration.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Dawn M. Sciarrino".

September 19, 2005

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